IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 421 of 2005.

Reserved on: 23.11.2007.

Decided on: 03.12.2007.

Lal Singh and Others. … … **Petitioners.**

Versus

Union of India & Others. … … **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioners: **Mr. Ajay Sharma, Advocate.**

For Respondents No.1 & 2: **Mr. Ravinder Thakur, Central Government Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner No.1 was appointed as Sub-Inspector (General Duty) on 11th May, 1975. The petitioner No.2 was appointed as Sub-Inspector (General Duty) with effect from 5th April, 1975 and the petitioner No.3 was appointed as Sub-Inspector (General Duty) with effect from 26.3.1975. The petitioners had approached this Court by way of CWP No.404 of 1995 seeking the following reliefs:-

a) Order Annexures-P4 and P11 may very kindly be quashed and set aside and the respondents No.1 to 3 may very kindly be directed to treat the petitioners senior than the respondents No.4 to 26 and release all consequential benefits;

Whether reporters of local papers may be allowed to see the judgment? Yes.

b) Directions may also very kindly be issued to the respondents No.1 to 3 to promote the petitioners from the date their juniors were promoted by quashing the promotions of respondents No.4 to 26 with further directions to the respondents No.1 to 3 to grant all benefits of seniority, pay and allowances, arrears accrued thereto, etc. with interest @ 18% per annum, in the interest of law and justice;

c) Cost of the petition may also very kindly be allowed in favour of the petitioners and against the respondents;

d) Records of the case be also summoned for the kind perusal of this Hon'ble Court; and

e) Such other or further order as this Hon'ble Court may deem fit and proper keeping in view the facts and circumstances of the case may also very kindly be passed in favour of the petitioners and against the respondents in the interest of law and justice.

A Division Bench of this Court allowed the writ petition and the operative portion of the judgment read thus:-

> **"As we have already pointed out the petitioners are seniors to the Respondents No.4 to 26 as per the seniority list dated 30.11.1978, it should be the relevant seniority list for considering the promotions of the petitioners as against Respondents No.4 to 26. The Respondents are, therefore, directed to revise the present seniority list pertaining to the higher posts, namely the post of Inspector, Company Commander and Deputy Commander.**
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> **To make the matter clear, Annexure P-4 is declared null and void in the eye of law. The petitioners will be entitled to all consequential benefits. The writ petition is ordered accordingly. There will be no order as to costs."**

In sequel to the judgment rendered by the Division Bench of this Court, the order dated 9th June, 1999 was issued. The text of order dated 9th June, 1999 read thus:-

> **"The President is pleased to appoint the following officers to the grade of Coy. Commander and Dy. Commandants in the pay scale of Rs.2200-4000/- and Rs. 3000-4500/- (Pre-revised) respectively with effect from the date of promotion of their immediate junior Shri Dhanna Singh as Coy. Commander with effect from 18.6.87 and as Dy. Commandant w.e.f. 27.5.96 on notional basis and on actual basis as per details indicated against each:-**

Sl. No.	Name	Date of notional promotion as Coy Comdr/Dy. Comdt.	Date of actual promotion as Coy. Comdr./Dy. Comdt.
S/Shri			
1.	**Hem Raj**	**18.6.87 : 27.5.96**	**31.10.91 24.12.98(FN)**
2.	**R.L. Sirtaj**	**18.6.87 : 27.5.96 (AN)**	**11.11.91 24.12.98(FN)**
3.	**Lal Singh Thakur**	**18.6.87 27.5.96**	**07.4.92 13.11.98(AN)**

> **2. Their notional Seniority in the rank of Dy. Comdt. will be determined w.e.f. 27.5.96 and they will be placed above Shri Dhanna Singh in the order as indicated above.**
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> **3. The President is further pleased to order that their pay in the rank of Coy. Commander and Dy. Comdt. should be fixed under FR-27 at the stage it would have reached, had they been promoted as Coy. Commander w.e.f. 18.6.87 and as Dy. Commandant w.e.f. 27.5.96 i.e. the date of promotion as such of their immediate junior Shri Dhanna Singh without payment of arrears."**

The petitioners were also assigned the due seniority pursuant to the judgment of this Court dated 21st August, 1997. The respondent No.3

feeling aggrieved by the issuance of the re-drawn seniority list whereby the petitioners were assigned the correct seniority as per the judgment of this Court, approached the Hon'ble Gauhati High Court by way of writ petition (Civil) No.232 of 2001. The Gauhati High Court disposed of the writ petition on 8.1.2002. The operative portion of this judgment reads thus:-

> **"In that view of the matter, no effective decision could be arrived at fixing the seniority position of the petitioner vis-à-vis the aforesaid 3 incumbents. But it appears that the petitioner's already fixed seniority position in the below rank (in the post of Coy. Commander) had been disturbed detriment to the interest of the petitioner unheard and as such I am constrained to direct that the name of Hemraj Sharma, Ramlal Sirtaj, Lal Singh Thakur as available at Sl. No. 8, 9 and 10 and the name of the petitioner S. Yaiskul Singh as available in Sl. No.43 of the seniority list published in 1988 for the post of Coy. Commander be off listed from the said seniority list and the seniority position of the petitioner and the aforesaid 3 incumbents namely, Hemraj Sharma, Ram Lal Sirtaj and Lal Singh Thakur be refixed after allowing all of them reasonable opportunity of being heard and that must be done within a period of forty five days from today."**

Though the specific direction was issued by the Gauhati High Court only qua the present petitioners and the petitioner before the Gauhati High Court, i.e. Shri Sagolson Yaiskul Singh, but the respondents No.1 and 2 revised the earlier seniority list of Inspectors and the Assistant Commandants. The petitioners were directed to make the representations against the proposed seniority list of Assistant Commandants within a period of 20 days vide memorandum dated 22.4.2002. The petitioners made representations dated 27.4.2002, 8.5.2002 and 6.5.2002 and the same were rejected by the Deputy Inspector General of Police on 18.6.2002. The respondents No.1 and 2

after the rejection of the representations made by the petitioners, vide memorandum dated 22.4.2002 revised the seniority list which affected the promotion already granted to the petitioners and in fact, the petitioner No.2 was reverted against which the petitioner No.2 made a representation, but the same was rejected by the competent authority on 19th October, 2004.

Mr. Ajay Sharma had strenuously argued that the change made in the seniority list by the respondents as well as the orders effecting their promotions including the reversion of petitioner No.2 from second I.C. to Deputy Commandant are arbitrary thus, violative of Articles 14 and 16 of the Constitution of India. He further contended that on the basis of the judgment of this Court dated 21.8.1997 the seniority list was re-cast and the petitioners were further promoted as per order dated 9th June, 1999, but the respondents No.1 and 2 by mis-construing the judgment of the Gauhati High Court have un-settled the settled things which is not permissible under the law. Mr. Ravinder Thakur had argued that anomalous situation had arisen after implementing the judgment of this Court dated 21.8.1997. In other words, he had supported the orders passed by the competent authorities altering the seniority list and promotions of the petitioners.

I have heard the learned counsel for the parties and perused the record.

What emerges from the pleadings of the parties is that a Division Bench of this Court while allowing the writ petition No.404 of 1995 on 21.8.1997 had granted the petitioners all the consequential benefits specifically directing to revise the seniority list pertaining to the higher post, namely of the post of Inspectors, Company Commanders and Deputy Commandants. In fact the judgment dated 21st August, 1997 was implemented in its entirety and consequently, the seniority list was

also re-cast and the petitioners were promoted as per order dated 9th June, 1999. The respondent No.3 approached the Gauhati High Court by way of CWP No.232 of 2001 seeking a direction that he may be ranked above the present petitioners. The only direction which has been issued by the learned Single Judge of Gauhati High Court was that ***"I am constrained to direct that the name of Hemraj Sharma, Ramlal Sirtaj, Lal Singh Thakur as available at Sl. No. 8, 9 and 10 and the name of the petitioner S. Yaiskul Singh as available in Sl. No.43 of the seniority list published in 1988 for the post of Coy. Commander be off listed from the said seniority list and the seniority position of the petitioner and the aforesaid 3 incumbents namely, Hemraj Sharma, Ram Lal Sirtaj and Lal Singh Thakur be refixed after allowing all of them reasonable opportunity of being heard and that must be done within a period of forty five days from today."***

It is thus evident that the Hon'ble Single Judge of Gauhati High Court had granted the relief to respondent No.3 qua the petitioners directing the off listing them and bringing respondent No.3 above them. This was the only direction which was required to be carried out by respondents No.1 and 2. The respondents No.1 and 2 instead of confining to implement the judgment qua the petitioners and respondent No.3 enlarged the scope unnecessarily by revising the entire seniority list of the Inspectors and the Assistant Commandants. The memorandum dated 22.4.2002 makes interesting reading. What has been stated under the subject of the memorandum is ***"implementation of judgment dated 21.8.1997 of the Hon'ble High Court of HP at Shimla and compliance to the judgment dated 8.1.2002 of the Hon'ble HC of Guwahati."*** As far as the judgment of this Court dated 21.8.1997 is concerned, the same already stood implemented and nothing more was required to be done by the respondents No.1 and 2.

So far as the judgment of the Gauhati High Court rendered by the Hon'ble Single Judge was concerned, the alteration in the seniority list could be only to the effect that the respondent No.3 was to be brought above the petitioners. The respondents No.1 and 2 had mis-construed the judgment rendered by this Court as well as by the Hon'ble High Court of Gauhati, dated 21.8.1997 and 8.1.2002 respectively. The end result of the mis-construction of these two judgments by the respondents No.1 and 2 was that the settled things have been un-settled and the petitioners to whom seniority was assigned in the year 1998 and stood promoted vide order dated 9.6.1999 were brought enblock below the respondents No.3 to 26 arrayed in CWP No.404 of 1995. The promotion of the petitioners to the higher post was also affected and as for as the petitioners No.1 and 3 are concerned, their date of promotion was altered. As far as the petitioner No.2 is concerned, he was reverted from the higher post and his representation was rejected as noted above by the competent authority. The only ground which has been projected in the reply by the respondents is that an anomalous situation had arisen after the judgment of this Court dated 21.8.1997 was implemented and the same was rectified after the judgment of Hon'ble Gauhati High Court dated 8.1.2002. A Division Bench of this Court had decided the CWP No.404 of 1995 on 21.8.1997, which stood implemented on the basis of which alterations were made in the seniority list in favour of the petitioners and they stood promoted. This Court is of the firm opinion that no anomaly had arisen as projected in the reply by the respondents No.1 and 2 and the judgment rendered by this Court had attained finality and stood implemented. The effect of the implementation of the judgment of this Court rendered in CWP No.404 of 1995 could not be tampered with by the respondents No.1 and 2. The judgment dated 21.8.1997 in CWP No.404 of 1995 was rendered by a Division Bench of

this Court and the judgment rendered on 8.1.2002 by Hon'ble Gauhati High Court is by a learned single Judge. The respondents No.1 and 2 should have given more weightage to the judgment by a Division Bench vis-à-vis the judgment of learned Single Judge. If at all the respondents were aggrieved in any manner by the judgment rendered by this Court in CWP No.404 of 1995 though it stood implemented, they could approach this Court by seeking clarification etc. Once the respondents No.1 and 2 have permitted the judgment of this Court dated 21.8.1997 rendered in CWP No.404 of 1995 to attain finality, the respondents had transgressed their authority by over-reaching the same by taking a fresh decision under the order passed by the Hon'ble Gauhati High Court on 8.1.2002. Even the Hon'ble Gauhati High Court had confined the relief between the petitioners and respondent No.3 by directing that the respondent No.3 be brought above the petitioners. The respondents No.1 and 2 have unnecessarily un-settled the settled things after the judgment of this Court stood implemented by them. After the relief was granted to respondent No.3, he alone was to be benefited and the other incumbents who were not party before the Hon'ble Gauhati High Court could not be granted the relief unilaterally by respondents No.1 and 2 even as per the judgment of the Gauhati High Court. The respondents No.1 and 2 have done something indirectly which they could not do directly.

The respondents No.1 and 2 have altered the seniority list immediately after the judgment of Hon'ble Gauhati High Court. The representations were called from the petitioners after the seniority list had already been altered to the disadvantage of the petitioners. The petitioners have made detailed representations against the changes effected in the seniority list on 8th May, 2002, 8.5.2002 and 6.5.2002. They have projected in their representations that the judgment of this

Court rendered in CWP No.404 of 1995 has been set to naught by effecting alterations in the seniority list. The petitioner No.3 in his representation had gone to the extent of even seeking the time to approach the Apex Court for redressal of his grievance after the passing of the judgment by the Hon'ble Gauhati High Court which according to him was contrary to the judgment rendered by this Court on 21.8.1997. The representations made by the petitioners have been rejected by considering the irrelevant materials and ignoring the material facts. Even while rejecting the representations made by the petitioners, the Deputy Inspector General of Police (EB) has held in his order dated 18.6.2002 that the seniority had been assigned to Shri Sagolson Yaskul Singh, respondent No.3 while implementing the judgment of Hon'ble Gauhati High Court and of this Court. The observation made by the Deputy Inspector General of Police (EB) while rejecting the representations made by the petitioners that the seniority list was re-drawn to implement the judgment of this Court was mischievous and un-called for. In fact, it is reiterated that the judgment of this Court stood already implemented and only limited relief was granted to respondent No.3 by the learned Single Judge of Hon'ble Gauhati High Court in his judgment dated 8.1.2002.

Their Lordships of the Hon'ble Supreme Court in ***Madan Lal v. State of Punjab and others, AIR 1994 SC 647*** have held that direction remaining un-assailed and operative should be complied by the authorities. Their Lordships have held as under:-

> **"Learned counsel for the appellant submits that the question before the High Court was not whether the principles laid down in Rangaiah's case, (AIR 1983 SC 852), were attracted and whether directions issued earlier by the High Court in its order dated 2nd December, 1991 were or were not right, but the real question was one of obedience of**

directions contained in the earlier order dated 2nd December, 1991 which had become final. The only question to be considered by the High Court was whether the Financial Commissioner had obeyed the mandamus issued in the said W.P. No. 5728 of 1991. The consideration of the appellant's case, after the direction of the High Court dated 2nd December 1991, it is urged, ought to have accorded with the specific directions therein. It is urged that palpably those directions had not been obeyed and, avowedly the amended criteria were applied by the Financial Commissioner.

On a consideration of the matter, the point urged by the appellant's learned counsel appears to us to be well taken and should succeed. It is not the question whether Rangaiah's case, (AIR 1983 SC 852), applied to the present situation; nor even whether the earlier Writ Petition No. 5728 of 1991 was correctly decided or not. Even assuming it was not, the question is whether the Financial Commissioner could ignore the earlier mandamus and decline to implement the directions contained in the order dated 2nd December 1991 in Writ Petition No. 5729 of 1991 which had become final and binding between the parties and whose finality had not been assailed in a manner known to or recognised by law. We do not want to be understood to have affirmed or approved the correctness of the order dated 2nd December 1991 in Writ Petition No.5728 of 1991; not do we hold that Rangaiah's case was applicable to the present facts. All that we need say is that as long as the earlier order dated 2nd December 1991 in W.P. No. 5728 of 1991 remained operative it had to be treated as law for the case and obeyed."

Similarly, their Lordships of the Hon'ble Supreme Court in ***Shreedharan Kallat versus Union of India and Others (1995) 4 SCC 207*** have held that order of the High Court regarding validity or interpretation of Rule having achieved finality is binding on the department and cannot be challenged by it in another case. Their Lordships have further held that such unwarranted stand by public

authorities results in protracted litigation involving wastage of money and time. Their Lordships have held as under:-

> **"What is surprising is that apart from respondents even the Railways which was unsuccessful twice again raked up the same controversy and supported the respondents. The plea of the Railways is described thus by the Tribunal:**
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> > **"Thus the stand taken by the railways in their counter in all these applications is that Shreedharan will not be entitled either for retention as RSO or for promotion or for protection of the emoluments which he had received while on deputation, but for the judgments of the Kerala High Court."**
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> **The Tribunal framed following issues:**
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> **"(i) Whether the order of the fourth respondent dated 22-5-1979 appointing Shreedharan as CTTI with effect from 1-1-1979, is valid;**
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> **(ii) whether the order of the fourth respondent dated 16-6-1979 confirming Shreedharan as CTTI with effect from 20-10-1975 is correct;**
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> **(iii) whether the order of the third respondent dated 21-6-1979 informing Shreedharan that he can be considered only for the post of Assistant Commercial Officer, is valid;**
>
> **(iv) whether the fourth respondent's order dated 24-5-1980 appointing Shreedharan as Public Relations Officer is valid;**
>
> **(v) whether the fourth respondent's order dated 27-1-1983 fixing the seniority of Shreedharan in Class II as on 1964 is valid in law."**
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> **The first four issues having been settled by the judgment of the High Court, the Tribunal committed act of grave impropriety in attempting to reopen it. Such practice of the Tribunal cannot be commended. It has interfered at the instance of the respondents who were not adversely affected. The judgment was binding on Railways. It could not once again take up those very pleas which were rejected by the High Court. Such unwarranted stand by public**

authorities results in protracted litigation involving wastage of money and time.

Assuming that the respondents could challenge fixation of seniority of the appellant as the order which furnished foundation for the determination of seniority, was passed without impleading the respondents, the scope of such petition could be limited. In service matters where validity or interpretation of rule is concerned any order passed by the courts which achieves finality is binding on the department. If the court is satisfied that any employee has been prejudiced or his right under Article 14 has been violated it may interfere in his favour. But the department is precluded from challenging the interpretation given by the court. Since the earlier order has been upheld by this Court the order could be set aside by this Court. The Tribunal could not have passed an order which resulted in disturbing the finality about interpretation of rule specially when the SLP had been dismissed by this Court."

Mr. Ajay Sharma has submitted during the course of hearing on the basis of the affidavit filed in this Court that the respondents No.3 to 26 arrayed in CWP No.404 of 1995 had already retired from service.

In view of the observations made hereinabove, this writ petition is allowed. The impugned Annexures P-6, P-8, P-9, P-10 and P-12 are quashed and set aside with a declaration that the petitioners will be entitled to all the consequential benefits which had become available to them immediately after the judgment rendered by the Division Bench of this Court, dated 21.8.1997 whereby their seniority was restored and they were promoted. The consequential orders restoring the seniority and promotion of the petitioners will be passed by the respondents No.1 and 2 within six weeks from today. No order as to costs.

December 03, 2007. **(Rajiv Sharma),**
(sck) **Judge.**